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SERVICE DATE – DECEMBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34124

LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION—CONTINUANCE IN CONTROL EXEMPTION—B&H RAIL CORP.

Decided: December 5, 2001

BACKGROUND

By petition filed on October 26, 2001, Livonia, Avon & Lakeville Railroad Corporation (LAL or petitioner), a Class III rail carrier, seeks an exemption from the prior approval requirements of 49 U.S.C. 11323 et seq. to continue in control of B&H Rail Corp. (B&H), upon B&H's becoming a rail carrier pursuant to a related transaction in B&H Rail Corp.—Lease and Operation Exemption—Livonia, Avon & Lakeville Railroad Corporation and Norfolk Southern Railway Company, STB Finance Docket No. 34123 (STB served Nov. 13, 2001, and published the same day at 66 FR 56900). We will grant the petition.

LAL's petition was filed simultaneously with B&H's STB Finance Docket No. 34123 filing, a verified notice of exemption under 49 CFR 1150.31 et seq. to acquire and operate two rail lines (B&H lines) in Steuben County, NY, as follows: (1) B&H's acquisition, by assignment, of all the contractual operating rights of LAL over an approximately 34.03-mile rail line that extends between approximately milepost 8.68, at Hammondsport, and approximately milepost 0.85, at Bath (which is also designated as approximately milepost 285.10), and from that point to approximately 311.3 in Wayland;¹ and (2) B&H's sublease from Norfolk Southern Railway Company (NSR) of an approximately 17.08-mile connecting rail line that extends between approximately milepost 285.10, at Bath, and approximately milepost 268.02, at Painted Post.² B&H intended to consummate its lease and operation transaction on or soon after November 2, 2001, the date the notice in STB Finance Docket No. 34123 became effective.

¹ The Steuben County Industrial Development Authority owns the 34.03-mile rail line (SCIDA line). LAL's operation of the SCIDA line was previously exempted by the Board in Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency, STB Finance Docket No. 32941 (STB served May 22, 1996).

² The 17.08-mile rail line is owned by Pennsylvania Lines LLC, and currently operated by NSR.

LAL states that it owns all of the outstanding capital stock of B&H. LAL also states that, to avoid any allegation or assertion that LAL is controlling or has the power to control B&H, it placed the stock of B&H in an independent, irrevocable voting trust pursuant to 49 CFR 1013 pending the disposition of this proceeding.

At the time this petition and B&H's notice of exemption in STB Finance Docket No. 34123 were filed, LAL states that it owns and/or operates approximately 65 route miles of rail line in upstate New York.³ In addition, LAL controls, through stock ownership, two other Class III rail carriers: Ontario Central Railroad Corporation, which owns or operates approximately 14 route miles of rail line between West Victor and Shortsville, NY;⁴ and Western New York & Pennsylvania Railroad, LLC, which leases or operates approximately 145.2 route miles of rail line between Hornell, NY, and Corry, PA.⁵

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(3). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope; or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the requirements of section 11323 for LAL's continuance in control of B&H is consistent with the standards set forth in section 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323 et seq. is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)]; fostering sound economic

³ See Livonia, Avon & Lakeville Railroad Corporation—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation, STB Finance Docket No. 32754 (STB served Mar. 11, 1996); Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency, STB Finance Docket No. 32941 (STB served May 22, 1996).

⁴ See Livonia, Avon & Lakeville Railroad Corporation—Acquisition of Control Exemption—Ontario Central Railroad Corporation, STB Finance Docket No. 33674 (STB served Nov. 18, 1998).

⁵ See Livonia, Avon & Lakeville Railroad Corporation—Continuance in Control Exemption—Western New York & Pennsylvania Railroad, LLC, STB Finance Docket No. 34016 (STB served Apr. 30, 2001).

conditions in transportation [49 U.S.C. 10101(5)]; and encouraging efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. LAL has indicated that there will be no adverse impact on rail operations or a lessening of rail competition in any market, in any corridor or at any common point as a result of the proposed transaction. LAL has further indicated that no shippers will lose access to rail service on the B&H lines. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

To ensure that LAL's and NS' shippers are informed of our action, we will require LAL and NS to serve a copy of this decision on their respective shippers within 5 days of the service date of this decision and to certify to us that they have done so.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This continuance in control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323 et seq. LAL's continuance in control of B&H.
2. LAL and NSR shall serve a copy of this decision on all shippers on the lines within 5 days of the service date of this decision and certify to the Board that they have done so.
3. Notice will be published in the Federal Register on December 12, 2001.

4. This exemption will be effective on January 11, 2002. Petitions for stay must be filed by December 27, 2001. Petitions for reconsideration must be filed by January 7, 2002.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary